

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

Phillips
25488

FILE: B-210394

DATE: June 17, 1983

MATTER OF: Lutz-Superdyne

DIGEST:

Protest against rejection of its bid by General Services Administration (GSA) is academic since protester offered to supply items manufactured in Mainland, China, and Public Law 97-377 (96 Stat. 1830) provided that no part of any Department of Defense (DOD) appropriation could be used to purchase any of the items in question that were manufactured in a foreign country. DOD is primary user of items.

Lutz-Superdyne (Lutz) protests the finding of nonresponsibility made by the General Services Administration (GSA) and award to any other bidder under invitation for bids (IFB) No. FTP-BC-F0153-A.

The protest is dismissed.

The above solicitation covered requirements for calipers, micrometers and dividers. Lutz submitted the apparent low bid for 14 items, including items 14 through 17 and item 22, which Lutz indicated would be manufactured in China and imported through the Fred V. Fowler Company (Fowler).

A plant facilities inspection of Lutz's facilities was conducted and, while the inspection report was generally favorable, it did not make a recommendation concerning Lutz's responsibility, but instead suggested that Fowler's facilities be inspected. Although Lutz offered to provide unnamed Japanese sources as "back up" suppliers in the event there were delivery problems with the Chinese manufacturer, GSA still had concerns about Lutz's responsibility due to its doubts about Fowler, Lutz's primary supplier. An inspection of Fowler's facilities was conducted and it was determined that in spite of the fact that Fowler had many of the items on hand, there would be a slippage in delivery schedules. On the basis of the negative plant facilities inspection report on Fowler, Lutz was found to be nonresponsible.

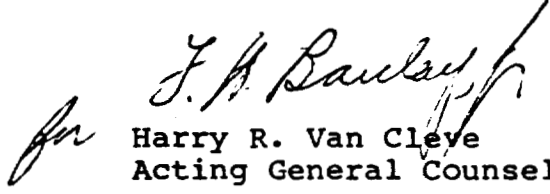
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Lutz contends that both it and Fowler are responsible firms and that it would have delivered the items in question on schedule.

Subsequent to the plant facilities inspection, another development which had a bearing on Lutz's eligibility to receive award was the passage of Public Law 97-377 (96 Stat. 1830), a joint resolution which continued appropriations for a number of Government agencies for the balance of 1983. Section 723 of the act, which applies to the Department of Defense, provides, in part, that:

"No part of any [DOD] appropriation contained in this Act * * * shall be available for the procurement of * * * hand or measuring tools * * * not produced in the United States or its possessions * * *."

We have been advised that DOD is the primary user of these items. Therefore, even if we determined that GSA's determination that Lutz was not a responsible bidder was erroneous, Lutz's protest is academic in light of the above statutory prohibition since DOD is prohibited from placing orders against any requirements contract awarded to Lutz. See International Business Investments, B-209051, January 10, 1983, 83-1 CPD 23, and Bompert Cleaning Service, B-210480, February 18, 1983, 83-1 CPD 174.


Harry R. Van Cleve
Acting General Counsel